

Valley View
Bank

11312

RECORDATION NO. Filed 1425

December 27, 1979

JAN 2 1980 9 35 AM

11312

INTERSTATE COMMERCE COMMISSION RECORDATION NO. Filed 1425

Ms. Mildred Lee

Interstate Commerce Commission

12th and Constitutional Avenue N.W.
Washington, D.C. 20423

JAN 2 1980 9 35 AM

No. 8-DO2A020

Date JAN 2 1980

Fee \$ 100.00

ICC Washington, D. C.

Dear Ms. Lee:

In accordance with the provisions of Section 20 c of the Interstate Commerce Act and Section 1116 of Title 49 of the Code of Federal Regulations, there is submitted herewith for filing and recordation, a Management Agreement and a Security Agreement on Hopper Cars used or intended for use in connection with interstate commerce. The enclosed instruments are described as follows:

Three (3) executed originals of a Security Agreement dated December 27, 1979, by and between Valley View Bank, Dallas, as secured party and I. Richard Toranto M.D. as debtor.

One original and two copies of the Management Agreement signed between Railtex, Inc. and I. Richard Toranto M.D.

The one railroad Hopper Car described in the Security Agreement is as follows:

One Railroad Hopper Car, TRAX #220, AAR Car, type code - H250, 154,000 LBS capacity, cubic capacity 2730 ft.

Enclosed is a cashier's check in the amount of \$100 to cover the recordation fees.

The address of the Debtor, I. Richard Toranto M.D. is 7309 McKamy, Dallas, Texas 75248; and the address of the mortgagee, Valley View Bank is P.O. Box 30100, Dallas, Texas 75230.

Please return the proper documents with the filing data noted thereon to Mr. Doyle Lee, Senior Vice President, Valley View Bank, P.O. Box 30100, 75230. If you need additional information with regard to these documents or this transaction, please contact the undersigned. Thank you for your attention to this matter.

Sincerely,


Doyle Lee
Senior Vice President

rm
enclosures

FILED
JAN 2 1980
FEB 1 1980

Interstate Commerce Commission

Washington, D.C. 20423

1/2/80

OFFICE OF THE SECRETARY

Doyle Lee
Valley View Bank
13101 Preston Rd.
Dallas, Texas 75240

Dear
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/2/80 at 9:35am, and assigned re-recording number(s). 11312, 11312-A & 11313

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 11312
JAN 2 1980
INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

LEGEND -- RESTRICTION ON TRANSFER

Although this Management Agreement and the railroad hopper cars to be managed pursuant to the provisions hereof may be securities, they have not been registered under the Securities Act of 1933, as amended (the "Act"). No transfer of an interest hereunder or of any railroad car subject to this Agreement (except for the grant of a security interest) shall be made without the consent of RailTex, Inc. and in the absence of (i) an opinion of counsel for, or counsel satisfactory to, RailTex, Inc. that such transfer will not require compliance with the registration requirements of the Act and of any applicable state laws or (ii) an effective registration statement under the Act and any applicable state laws covering the rights proposed to be transferred.

THIS MANAGEMENT AGREEMENT ("Agreement"), by and between RailTex, Inc., a Texas corporation ("RailTex"), having its principal place of business in San Antonio, Texas, and

I. Richard Toranto, M.D. ("Owner"), a resident
of Dallas County, Texas.

W I T N E S S E T H:

WHEREAS, Owner has purchased one (1) railroad hopper car from Mr. John J. Gurun which he purchased pursuant to RailTex, Inc. CONDITIONS OF SALE, Attachment A, and BILL OF SALE, Attachment B, each dated April 27, 1979,

which carry and will continue to carry the designation "TRAX
220 " ~~XXXXXXXX~~ " ~~TRAX~~ XXXXXXXX (the "Railway Equipment") and is
desirous of entering into the following Agreement with
RailTex, whereby RailTex will manage the Railway Equipment
pursuant to the terms and conditions hereof; and

WHEREAS, RailTex is desirous of undertaking the manage-
ment of the Railway Equipment pursuant to the terms and
conditions hereof;

NOW, THEREFORE, in consideration of the premises and
the mutual covenants and conditions set forth herein, the
parties hereto agree as follows:

ARTICLE I

APPOINTMENT

1. Owner hereby appoints RailTex to manage and other-
wise supervise the operation of the Railway Equipment in the
name of the Owner, or in the name of RailTex, but for the
account and on behalf of the Owner pursuant and subject to
the terms and conditions set forth in this Agreement.

2. RailTex hereby accepts the appointment set forth
in paragraph 1 of this Article I and agrees to perform the
duties and obligations set forth herein. Owner acknowledges
and agrees that, whereas RailTex has accepted the responsi-
bility of managing the Railway Equipment, except as specif-
ically set forth herein to the contrary or as provided by
law, RailTex shall have the sole function and operative

judgment, to be exercised in a reasonable manner, for the leasing, operation and management of the Railway Equipment and for establishing and implementing policies and standards of leasing, operation, service, maintenance, repair, reporting and other such policies and standards affecting the Railway Equipment or the operation, maintenance or repair thereof. .

ARTICLE II

OWNER'S COVENANTS AND RESPONSIBILITIES

1. Effective on the delivery of the Railway Equipment by RailTex to Owner, Owner does hereby deliver and release to RailTex the Railway Equipment for the management thereof by RailTex, and RailTex acknowledges delivery and receipt thereof.

2. Except as provided below, Owner shall be responsible for the payment of all expenses incurred in connection with the Railway Equipment, including ad valorem and other taxes, freight, storage, design changes and other modifications required by governmental regulations or technological changes, deductibles under insurance policies, insurance premiums and other expenses, levies or charges, including the Management Fee (as defined in Article V hereof), incurred in connection with the Railway Equipment and the operation and leasing thereof (all of which shall hereinafter be sometimes collectively referred to as the "Expenses").

3. If the Lease Fees (as defined in paragraph 1 of Article III) earned by the Railway Equipment are less than the Expenses incurred or reasonably foreseeable in connection with the operation and management of the Railway Equipment hereunder, RailTex will so advise the Owner in the Quarterly Report provided for under Article III, paragraph 8 hereof, including the amount of such deficiency and, if requested by RailTex, Owner will remit to RailTex within ten (10) days of receipt of the Quarterly Report the amount of such deficiency.

4. Owner agrees to cooperate fully with RailTex and to provide all assistance reasonably requested by RailTex to carry out its obligations hereunder. This shall include, subject to the provisions of Article VI hereof, full cooperation and assistance in any lawsuit or other similar matter or proceeding before any court or agency.

ARTICLE III

RAILTEX'S COVENANTS AND RESPONSIBILITIES

In consideration of the Management Fee provided for hereunder, RailTex agrees to utilize reasonable time and efforts to:

1. Collect the rental and service charges earned by the Railway Equipment (the "Lease Fees"). Such duties shall not, however, be deemed to include the filing of a suit to collect such Lease Fees, although RailTex may elect to do so at its option but at the expense of Owner, subject to the provisions of Article VI hereof.

2. Use its best efforts to obtain leases for the Railway Equipment for terms not to exceed sixty (60) months and maintain the Railway Equipment under lease throughout the term of this Agreement. RailTex agrees not to enter into any lease agreement with respect to the Railway Equipment with a term of less than one (1) year or concerning which RailTex projects revenues less than the Expenses projected for the term of the lease without the Owner's prior written approval.

3. Comply with the terms and conditions of any lease agreements to which the Railway Equipment is subject during the term hereof.

4. Make all required registration and other filings with the Interstate Commerce Commission, the Association of American Railroads, the Department of Transportation and any other governmental or industry authority.

5. Maintain adequate books and records sufficient to account properly for the Lease Fees, Expenses and other such items applicable to the Railway Equipment.

6. Contract for or otherwise obtain all repair and/or maintenance work on the Railway Equipment considered necessary by RailTex, such repair and/or maintenance work to be paid for by Owner.

7. Provide periodic reports to Owner on a quarterly basis (the "Quarterly Reports") which shall set forth the

Lease Fees derived from the use of the Railway Equipment, as well as Expenses incurred or that are reasonably foreseeable to be incurred in connection with the Railway Equipment.

The Quarterly Reports shall be for the quarters ending March 31, June 30, September 30 and December 31, and will be delivered to Owner as promptly as is reasonably possible.

Should the Lease Fees exceed the Expenses incurred in connection with the Railway Equipment, payment of the excess (except for any amount retained under this paragraph) shall accompany the Quarterly Report. Should Expenses (incurred or reasonably foreseeable) exceed the Lease Fees for the period in question, the Quarterly Report will set forth the amount to be remitted by Owner to RailTex, if requested. It is understood that RailTex shall be under no obligation to advance funds for payment of the Expenses, regardless of the results of the nonpayment thereof. It is further understood that RailTex shall have the authority to retain portions of Lease Fees that exceed actual Expenses incurred to cover future Expenses that can be reasonably foreseen to exceed Lease Fees for the applicable future period or periods.

Such retention of Lease Fees shall be accomplished on a reasonable basis and in such a manner as to minimize the effect that such retention shall have on cash distributions, if any, made to Owner. No assessment for cash deficiencies shall be made to Owner, however, to the extent of unremitted mileage credits held by RailTex.

8. Maintain at Owner's expense the following insurance coverage on the Railway Equipment: a policy of general liability insurance with limits of coverage not less than the amounts and against the risks insured against by RailTex from time to time on railroad equipment owned by it; and a policy of property insurance with limits of coverage of not less than \$18,000.00 per car, with a \$850.00 deductible (to be paid by Owner) each occurrence, naming Owner as an additional insured. If at any time the general liability insurance maintained on the Railway Equipment shall have limits of less than \$2,000,000.00, for whatever reason, RailTex shall, not less than thirty (30) days after it receives effective notice of the decrease in such insurance coverage, give written notice to Owner of the same. RailTex will provide the Owner as promptly as practicable after receipt by RailTex a certificate setting forth the then existing insurance coverage on the Railway Equipment.

9. Reasonably pursue any and all warranties or other claims against manufacturers, users, lessees, railroads and other parties on behalf of Owner. Such duties shall not, however, be deemed to include the filing of suit, although RailTex may elect to do so at its option, but at the expense of Owner, subject to the provisions of Article VI.

ARTICLE IV

TERM AND TERMINATION

1. Subject to the provisions set forth herein, this Agreement shall be effective commencing with the first date on which a railroad car included in the Railway Equipment is paid for by Owner, as set forth in the Purchase Order for such railroad car, and shall automatically terminate five (5) years from such date, or at the expiration date of any lease in effect at the end of five years covering such railroad car.

2. Upon termination of this Agreement, RailTex shall be entitled to retain any and all Lease Fees received therefrom until all amounts outstanding due RailTex by Owner have been paid.

3. Should either party default under its obligations set forth herein, the other party may advise the defaulting party of such default, and should such default not be corrected within thirty (30) days of such notification, the aggrieved party may, at its option, immediately terminate this Agreement.

4. Neither RailTex nor the Owner shall, by reason of the expiration or the termination of this Agreement in accordance with the terms and provisions hereof, be liable to the other for compensation, reimbursement or damages, either on account of present or prospective profits or on

account of expenditures, investments or commitments made in connection therewith or in connection with establishment, development or maintenance of the business or goodwill of RailTex or the Owner, or on account of any other cause or thing whatsoever; provided, however, that such expiration or termination shall not affect the rights or liabilities of the parties with respect to any indebtedness owing by either party to the other; and further provided, that such expiration or termination shall be subject to any then existing lease or leases of the Railway Equipment, and RailTex shall be entitled to continue, pursuant to the terms and conditions of this Agreement, the management and control of any of the Railway Equipment covered by such lease or leases as may be necessary for RailTex to comply with such lease or leases, including the right to retain the Lease Fees, Management Fee and other sums as provided for herein, until the expiration or termination of such lease or leases. Except as may be otherwise expressly set forth herein, upon the expiration or termination of this Agreement, all obligations of the parties shall immediately cease. RailTex shall, however, provide reasonable assistance to Owner in transferring to Owner, all at Owner's expense and upon Owner's request, all records, data and other information relating to the Railway Equipment and in assisting Owner in the implementation of such records, data and information into Owner's operations.

ARTICLE V

MANAGEMENT FEE

In consideration of the services of RailTex hereunder, Owner shall pay to RailTex a Management Fee of \$105.00 per month per car during the calendar year 1979. The monthly Management Fee during each calendar year thereafter during the term hereof shall be increased from the amount of such monthly fee applicable to the previous calendar year by a percentage of such previous year's monthly fee equal to any percentage of increase of the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (1967 = 100) for such previous calendar year over the calendar year preceding it. The Management Fee shall be deducted from the remittance due quarterly to Owner as otherwise provided herein.

ARTICLE VI

LEGAL ACTIONS

RailTex will give written notice to Owner at least ten (10) days prior to the institution of legal proceedings by RailTex or not more than ten (10) days after being served with process in any legal proceedings against RailTex involving the Railway Equipment. Unless otherwise directed in writing by Owner, RailTex may, at its option, institute or defend, in its own name or in the name of Owner, or both, but not against each other, and in all events at the expense

of the Owner, any and all legal actions or proceedings it considers necessary hereunder, including those to collect charges, rents, claims or other income for the Railway Equipment, or lawfully oust or dispossess lessees or other persons in possession thereof, or lawfully cancel, modify or terminate any lease, license or concession agreement for the breach thereof or default by a lessee, licensee or concessionaire or take any and all necessary actions to protest or litigate to a final decision in any appropriate court or other forum any violation, order, rule, regulation, suit, claim or other matter affecting the Railway Equipment. RailTex shall keep Owner currently advised of all legal proceedings and Owner reserves the right to direct RailTex to terminate any litigation brought pursuant to the foregoing authority.

ARTICLE VII

ASSIGNMENT

This Agreement is not assignable by either party except with the written consent of the other party; provided, however, (a) this Agreement together with the Railway Equipment may be transferred by Owner to his estate, heirs or devisees or to any purchaser at a foreclosure sale where this Agreement and the related Railway Equipment are sold as collateral so long as such sale complies with applicable federal or state securities laws and (b) may be assigned by

RailTex in connection with the merger or consolidation of RailTex into another corporation or as part of the sale of substantially all of the assets of RailTex, provided that notice of such merger, consolidation or sale shall be given to Owner prior to the effective date thereof. RailTex may assign Agreement to wholly owned subsidiaries.

ARTICLE VIII

INDEMNIFICATION

Owner and RailTex jointly and severally acknowledge, agree and covenant that RailTex is entering into this Agreement as an independent contractor, and neither party hereto shall take any action to alter such legal relationship. Owner shall have no right or authority, and shall not attempt, to enter into contracts or commitments in the name, or on behalf, of RailTex, or to bind RailTex in any manner or respect whatsoever. Further, Owner agrees to indemnify and hold RailTex harmless from any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorney's fees, expenses and judgments, (except those arising out of gross negligence or willful misconduct of RailTex), which may hereafter be made or caused by any third party based on or relating to the Railway Equipment or the operation, including the leasing, thereof. RailTex agrees to indemnify and hold harmless Owner from and against any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorney's fees, expenses and

judgments which may hereafter be made or caused by any third party based on actions taken by RailTex in connection with the Railway Equipment, which actions were not authorized hereunder, were authorized hereunder but performed negligently, or were not specifically requested or approved by Owner.

ARTICLE IX

ADDITIONAL AGREEMENTS

1. Each party hereto shall promptly and duly execute and deliver to the other party such further documents, assurances, releases and other instruments, and take such further actions, including any necessary filings and the execution of a power of attorney of Owner, as the other party may reasonably request, in order to more fully carry out the intent and purpose of this Agreement and to indicate the ownership of the Railway Equipment during the continuance and upon termination of this Agreement.

2. It is understood that upon the expiration or termination of this Agreement as to any or all of the Railway Equipment, Owner shall no longer be entitled to use the Recording and UMLER Car Initials and Numbers and other designations (the "Designations") that are presently the property of RailTex. Accordingly, Owner agrees that it will promptly undertake upon such expiration or termination, at Owner's expense, all steps necessary to promptly change the

Designations on the Railway Equipment no longer included under the Agreement and to execute any and all documents requested by RailTex to transfer to RailTex any rights Owner may have acquired to such Designations. RailTex agrees to prepare, at RailTex's expense, documentation as, in its opinion, is necessary to change all Designations on the Railway Equipment from the Designations of RailTex to those adopted by Owner, and to provide reasonable assistance to Owner, at Owner's expense, in the filing of such documents.

3. Any notice or other communication by either party to the other shall be in writing, and shall be deemed to have been duly given if either delivered personally or mailed, postage prepaid, registered or certified mail, addressed as follows:

RailTex: RailTex, Inc.
4901 Broadway, Suite 221
San Antonio, Texas 78209
Attn: President

Owner: I, Richard Toranto, M.D.
7309 McKamy
Dallas, Texas 75248

or to such other address, and to the attention of such other person or officer as either party may designate to the other in writing as provided by this paragraph.

4. The Owner or his authorized representative shall be entitled to inspect the books and records of RailTex applicable to the Railway Equipment at any reasonable time during the office hours of RailTex.

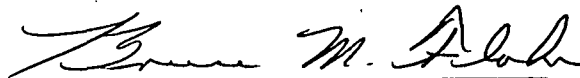
5. This Agreement contains the entire agreement of the parties hereto pertaining to the management and operation of the Railway Equipment. Except as otherwise provided herein, this Agreement may not be modified or amended, except by express, written agreement signed by both parties hereto. Any waiver of any obligation of either party hereto shall not be construed as a continuing waiver of any such obligation under any provision hereof.

6. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the heirs, administrators, executors, successors and assigns, if any, of the parties hereto, subject to the provisions pertaining to the assignment hereof set forth in Article VII.

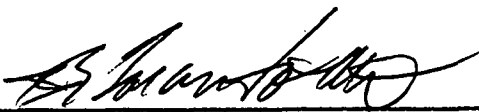
7. This Agreement shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have hereunto set their names, effective this 1st day of December, 1979.

RAILTEX, INC.

By 
President

OWNER


I. Richard Toranto, M.D.